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GOVERNMENT OF INDIA.

MINISTRY OF EDUCATION.

(A.3 Section)

~~NOTES.~~

Subject.

Draft Constitution of India - Comments on
the provisions contained in.

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No. CA/4/Cons./49.
CONSTITUENT ASSEMBLY OF INDIA

IMMEDIATE.

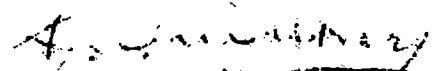
New Delhi,
July 12, 1949.

Dear Sir,

In continuation of my letter No. CA/4/Cons/49 dated the 11th July, 1949, I send herewith the following papers for your use at the meeting to be held on Thursday, July 14, 1949:-

- (1) Statement containing suggestions made by the Ministries of the Government of India for amendment of the Seventh Schedule to the Draft Constitution.
- (2) Notice of certain amendments to the Seventh Schedule given by the Drafting Committee and by Ministers of the Government of India.

Yours truly,


(S.N. Mukerjee)
Joint Secretary.

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CONSTITUENT ASSEMBLY OF INDIA

Statement containing suggestions made by the
Ministries of the Government of India for amend-
ment of the Seventh Schedule to the Draft
Constitution.

Ministry (1)	List and Entry. (2)	Amendments suggested. (3)	Remarks. (4)
Home Affairs.	UNION LIST		
	3. Preventive detention in the territory of India for reasons connected with defence, external affairs or the security of India.	In entry 3, substitute a semi-colon for the full-stop at the end of the entry and insert the following words thereafter :- "persons subjected to such detention".	[This is presumably intended to bring this provision into accord with the recent amendment made in the Government of India Act, 1935.]
Defence	-Do-		Amendment No. 3511 by Shri Yudhishtir Mishra suggesting the deletion of this entry should not be accepted.
-Do-	4. The raising, training, maintenance and control of Naval, Military and Air Forces of the Union and their employment; the strength, organisation and control of the armed forces raised and employed in States for the time being specified in Part III of the First Schedule.	In entry 4, delete the words "of the Union", and add the following :- "Territorial Army, National Cadet Corps, Militias, Scouts and other Armed Forces (excluding Armed Police)"	To make it clear that the Provinces will not have any authority to raise any military, naval or air force, the words "of the Union" should be deleted and the entry expanded as proposed. Pandit Kunzru has suggested (amendment No. 3512) the deletion of the second part of this entry relating to the Armed Forces in the States. As the draft stands, it only gives powers to the Central Government to control

(1)	(2)	(3)	(4)
Defence.	5. Industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war.	For entries 5 and 64 the following new entry be substituted :- "The regulation of industries, where such regulation under the control of the Union is declared by Parliament by law to be necessary or expedient in the public interest."	the strength and organisation of the Armed Forces raised and employed in the States. The question is whether the States should continue to have their own forces under the new Constitution. From the Defence Ministry's point of view it would be best to have all the Armed Forces in India not only under the control of the Central Government but also owing allegiance only to the Central Government. Whether this is feasible at the present stage is a matter which can best be considered by the States Ministry.
Industry and Supply.	5. Industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war. 64. Development of industries where development under the control of the Union is declared by Parliament by law to be expedient in the public interest.		Amendment No. 3513 seeking to delete this entry should not be accepted. The scope of the powers the Union Government may exercise under entry 5 is not clear. There is also an overlap between entries 5 and 64. The word "necessary" will bring out the compelling need of Union control, for example, in the event of a war. Entries 32, 33, 36 and 37 of the State List will/need amend- <u>also</u> ment in the light of the comments above.

(1)	(2)	(3)	(4)
Defence	7. Local self-government in cantonment areas, the constitution and powers within such areas of cantonment authorities, the regulation of house accommodation in such areas and the delimitation of such areas.	<u>This suggestion was considered by the Drafting Committee in October last, but was not accepted. Since then, The Hon'ble Dr. Syama Prasad Mookerjee has given notice of the following amendments (Nos. 3513 and 3552 of Notice of Amendments Vol. II) :-</u> 3513. That entry 5 in List I be deleted. 3552. That for entry 64 in List I, the following be substituted :- "Development and regulation of any industry, the development and regulation whereof under the control of the Union is declared by Parliament by law to be necessary or expedient in the public interest".	Mr. Sidhwa suggests either the deletion of the entire entry or the limitation of the scope of this entry very considerably. His amendment No. 3515 would have the effect of taking away from the States the power to regulate the relation between landlord and tenants in cantonment areas while amendment No. 3516 read with his amendment No. 3599 in List II proposes to transfer legislative power with regard to local self-government in cantonment areas from the Union to the States. The last two amendments, the Defence Ministry feel, would be retrograde and would make it impossible for the Centre to exercise the necessary control over the cantonments. In the circumstances, they feel that this entry should stand as in the Draft Constitution.

(1)	(2)	(3)	(4)
Works, Mines and Power.	"9. Atomic energy and mineral resources essential to its production."	For entry 9 the following be substituted:- "Atomic energy and mineral resources essential to its production, strategic or key minerals essential for the defence of India."	The necessity for this change arises out of the need for Central control of strategic and key minerals, essential for the defence of India, which is equally important as Central control of minerals essential for the production of atomic energy. The power provided under entry 66 of the Union List is not considered adequate. The Centre should have absolute power of control and development of strategic and key minerals, as also minerals essential for the production of atomic energy. [This suggestion was considered by the Drafting Committee in October last, but was not accepted.]
Law.	"37. Carriage of passengers and goods by air or by sea."	In entry 37, for the words "by air or by sea" the words "by air, by rail, or by sea" be substituted.	These amendments have been suggested by the Secretary in the Law Ministry with the approval of the Hon'ble the Law Minister and Hon'ble the Minister for Transport. The following extract from a note sent by the Law Secretary along with these amendments explain the reasons therefor:-
	"38. Union railways; the regulation of all railways other than minor railways in respect of the safety, maximum and minimum rates and fares, station and service terminal charges, interchange of traffic and the responsibility of railway administrations as carriers of goods and passengers;	For entry 38, the following be substituted:- "38. Railways." [See also amendment suggested to entry 19 of State List.]	"All the important company-run railways which existed before the war have been acquired by the Government of India. The number of private railway companies

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the regulation of minor railways in respect of safety and the responsibility of the administrations of such railways as carriers of goods and passengers.

operating in the Provinces or in the Acceding States is very small and the extent and importance of the railways run by them is comparatively even less. Minor railways under the management of a Provincial Government or of a local authority were always few in number and of no great consequence. With the cession of full jurisdiction by the Rulers of various small States, and the consequent integration of those States with the Provinces, the Government of India have come to own a certain number of Indian State railways, the largest of which is that of Baroda.

It should also be remembered that all States had agreed to accede generally in respect of communications, although when it came to drafting the Instrument of Accession under section 6 of the Government of India Act, it was found necessary to specify in terms item 20 of the Federal Legislative List. Thus, in regard to an Indian State Railway within an Acceding State, the legislative and executive authority of the Centre extends only to the five subjects mentioned in

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that item, namely, (i) safety, (ii) maximum and minimum rates and fares, (iii) station and service terminal charges, (iv) interchange of traffic, and (v) the responsibility of railway administrations as carriers of goods and passengers. Despite this limitation the whole of the Indian Railways Act, 1890, has been extended by the Dominion Legislature to all Acceding States. Strict constitutional theory would not support the validity of this wholesale extension as respects Indian State railways and minor railways in Acceding States. While it is unlikely that any serious challenge will emerge on this ground, it is obviously desirable that when we are framing a new constitution we should make the requisite provision to legalise what is obviously a practical requirement.

I suggest, therefore, that in the new constitution we should do away with all these distinctions between Union railways, Indian State railways (which designation, incidentally, is entirely inappropriate since the present Provinces are also to be called States) and minor railways, and assign all legislative and executive authority in respect of railways to the Union."

(1)	(2)	(3)	(4)
Industry and Supply.	"43. Acquisition or requisitioning of property for the purposes of the Union subject to the provisions of List III with respect to regulation of the principles on which compensation is to be determined for property acquired or requisitioned for the purposes of the Union."	Entry 35 of List III should be brought into the Union List and entry 43 of the Union List be suitably amended.	The principles on which compensation is to be determined is in the Concurrent List (Entry 35) and unless Central Legislation is enacted it may happen that the acquisition or requisitioning of property for the purposes of the Union will, in so far as compensation is concerned, have to be dealt with under a number of different State laws. This would seem to be undesirable; besides, the principles on which compensation shall be assessed, whether the acquisition, etc., is for the purposes of the Union or a State should be uniform throughout the country. [These suggestions were considered by the Drafting Committee in October last, but were not accepted.]
Commerce.	"49. Insurance."		H.M., Commerce, in a letter to the Chairman of the Drafting Committee, observes:- "You would have noticed that certain amendments (Nos. 3537-3539, Volume II, List of Amendments) have been given notice of by Shri S.T. Dharmadhikari and Shri K. Santhanam relating to entry 49 in List I of Schedule VII to the Draft Constitution of India. These are printed on page 383 of Volume II of the Notice of

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Amendments. My own personal view is that that entry should be left as it is without any qualification, or detracting from the powers of the Union to be in full control of Insurance. I do not know if the Drafting Committee or the Party are likely to consider entertaining any amendments at all. If they propose to, I have carefully considered how far we could, without serious detriment to larger national interests, agree to the dilution of the unqualified entry that now stands in the Draft. I am afraid none of the amendments given notice of would be suitable. The farthest I would suggest that we could go, is that in lieu of the existing entry 49 in the Union List, the two following entries may be inserted:-

'(1) In List I, for the existing entry 49, which reads "Insurance" without any qualification, the following should be substituted, viz.,

"The Law of insurance and the regulation of the conduct of insurance business; Government insurance, except so far as undertaken by a State with respect to any of the matters mentioned in List II."

(2) The following new entry to be inserted in List III:-

"Government insurance undertaken by a State with respect to any of the matters mentioned in List II: unemployment and social insurance

1.	2.	3.	4.
Home Affairs.	"52. Constitution, organisation, jurisdiction and powers of the Supreme Court and fees taken.	For entry 52, the following be substituted:- "52. Constitution and organisation of the Supreme Court and the High Courts; jurisdiction and powers of the Supreme Court and fees taken therein."	
Labour.	"57. Union agencies and institutes for the following purposes, that is to say, for research, for professional or technical training, or for the promotion of special studies."	In entry 57, for the words "professional or technical training" the words "professional, vocational or technical training" be substituted.	The wording of present entry 57 leaves room for doubt whether vocational training is covered by it. Hence the proposed amendment.
Home Affairs.	"58. Union Public Services and Union Public Service Commission."	For entry 58, the following be substituted:- "58. Union Public Services; All-India Services; Union Public Service Commission."	
Works, Mines and Power.	"63. Petroleum and other liquids and substances declared by Parliament by law to be dangerously inflammable, so far as regards possession, storage and transport."	For entry 63 the following be substituted:- "Regulation of oilfields and development of mineral oil resources; petroleum and petroleum products and other liquids and substances declared by Parliament by law to be dangerously inflammable."	Petroleum and petroleum products are of vital importance to the whole country, and no individual Province or State can be expected to deal adequately with this subject. According to the Draft item 63 as it stands at present, the Centre will have power to legislate only as regards possession, storage and transport. It is, however, very necessary that petroleum and petroleum products should be entirely within the Union List for all purposes including production, distribution, sale, etc., and not merely for possession,

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Works, Mines and Power.	"66. Regulation of mines and oilfields and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest."	In entry 66, the words "and oilfields" be deleted.	storage and transport. Further, though Provinces may be allowed to retain certain powers regarding minerals and mineral development in general, it is essential that oilfields and mineral oil development should be made exclusively a Union subject. Hence the proposed redraft of entry 63. The amendment to entry 66 is consequential on the above.
			Entry 28 of the State List will also require amendment so as to delete the words "and oilfields". [The Drafting Committee, after considering this suggestion, have proposed the following amendment (No. 3551 of Notice of Amendments, Volume II):- 'That in entry 63 in list I, the words "so far as regards possession, storage and transport", occurring at the end be deleted.]
Industry and Supply.		The following new entry be added to the Union List:- "Regulation of trade and commerce in and of the production, supply, price and distribution (a) of goods which are the products of the industries whose regulation under the control of the Union is declared by Parliament by law to be necessary or expedient in public interest, (b) of any other goods whose	For effective implementation by the Union Government of the industrial policy announced by the Government of India on the 6th April, 1948, and for other reasons, it is necessary to invest the Union Government with certain powers over trade and commerce in respect of and the production, supply, price and distribution of the goods produced by the industries to be brought under Central regulation and certain other goods such as wholly imported articles or agricultural products. [This suggestion was considered by the Drafting Committee in October last, but was

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regulation similarly is declared by Parliament by law to be necessary or expedient in the public interest."

not accepted. Since then the Hon'ble Dr. Syama Prasad Mookerjee has given notice of the following amendment (No. 3554 of Notice of Amendments, Volume II) :-

'That after entry 64 in List I, the following new entry be added:-

"64-A. Trade and commerce in, and the production, supply and distribution of -

(a) the product of industries the development and regulation whereof under the control of the Union is declared by Parliament by law to be necessary or expedient in the public interest; and

(b) any other goods, trade and commerce in, and the production, supply and distribution of which under the control of the Union is declared by Parliament by law to be necessary or expedient in the public interest."

Works, Mines and Power.

"74. The development of inter-State waterways for the purposes of flood control, irrigation, navigation and hydro-electric power."

For entry 74 the following be substituted:-

"Development of inter-State rivers and river valleys for the purposes of flood control, irrigation, navigation and hydro-electric power."

The word "waterways" emphasises the navigational aspect and might restrict the scope of Central control only to waterways, without giving to the Centre any control on the river valleys as a whole. The redraft proposed is very essential for multipurpose river valley development.

[The Drafting Committee have, after considering this suggestion, recommended the following redraft of this entry:-

"The development of inter-State rivers and inter-State waterways for purposes of flood control, irrigation, navigation and

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			hydro-electric power and for other purposes, where such development under the control of the Union is declared by Parliament by law to be expedient in the public interest." (See Amendment No. 3563 of Notice of Amendments, Volume II).
Industry and Supply.	"74. The development of inter-State waterways for purposes of flood control, irrigation, navigation and hydro-electric power."	The words "the development of" be deleted.	This is intended to give more comprehensive scope to the entry. [This suggestion was considered by the Drafting Committee in October last, but was not accepted.]
Health.	-do-	Entry 74 as proposed to be amended by Drafting Committee reads:- "The development of inter-State rivers and inter-State waterways for purposes of flood control, irrigation, navigation and hydro-electric power and for other purposes, where such development under the control of the Union is declared by Parliament by law to be expedient in the public interest." Health Ministry desire the insertion of the words "or regulation" after the word "development" in both places where it occurs.	Many important towns in India are situated on inter-State rivers and waterways. Problems of river pollution by industrial wastes and sewage, diminution of city water supplies by the diversion of water for irrigation purposes and such like can give rise to serious problems of an inter-Provincial nature and it is necessary for the Union to have power to legislate to regulate such matters. The need for some such power for the Centre was recognised by the Bhole Committee.
Industry and Supply.	"76. Manufacture and distribution of salt by Union agencies; regulation and control of manufacture and distribution of salt by other agencies."	For the words "manufacture and distribution" in the two places where they occur, the words "production, supply, price and distribution" be substituted.	The Drafting Committee, after considering this suggestion, have proposed the following amendment:- (contd.)

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For the words "manufacture and distribution" in the two places where they occur, the words "manufacture, supply and distribution" be substituted. Vide Amendment No. 3565 of List of Amendments, Volume II.]

Agriculture.

Union List.

Add the following in the Union List:-

"Co-ordination of the development of Agriculture including animal husbandry, forestry and fisheries."

These had already been considered by the Drafting Committee and were not accepted. The Agriculture Ministry have revived their earlier proposal that these should be accepted. They observe, as follows:-

"The additions and alterations previously recommended in regard to agricultural development were based on the policy statement on Agriculture and Food issued by the Government of India in 1946 with the approval of the Cabinet and the cognisance of the Legislature. Since the declaration of the above policy statement, certain circumstances of considerable significance have come into being which render it necessary now to ask for the acceptance in full of the suggestions previously made."

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Concurrent List.

Add the following new entries in the Concurrent List:-

- (a) "Reclamation of waste lands on a large scale requiring the use of plant and machinery."
- (2) "Forest Laws and working plans."
- (3) "Inland Fisheries and Fisheries Laws."

STATE LIST.

Home Affairs.

"1. Public order (but not including the use of naval, military or air forces in aid of the civil power); preventive detention for reasons connected with the maintenance of public order; persons subjected to such detention."

In entry 1, the following words be deleted:-

"preventive detention for reasons connected with the maintenance of public order; persons subjected to such detention."

[Same as remarks against entry 3 of List I.]

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1.	2.	3.	4.
Home Affairs.	"2. The administration of justice; constitution and organisation of all courts, except the Supreme Court, and fees taken therein."	For entry 2, the following be substituted:- "The administration of justice; constitution and organisation of all Courts, except the Supreme Court and the High Courts; fees taken in all Courts except the Supreme Court."	
Defence.			the Hon'ble Amendment No. 3590 by Shri K. Santhanam seeks to insert a new entry 5-A as follows: "Provincial Militia". The Defence Ministry think that "this should never be accepted. The Provinces should be permitted to have only whatever can be covered by the term 'Police'". The remarks against entry 4 may also be seen in this connection.
		of Union List	
Home Affairs.	"11. Elections to the Legislature of the State and of the Governor of the State/for the constitution of a panel for the purpose of the appointment of a Governor for the State; and Election Commission to superintend, direct and control such elections.	In entry 11, delete the words "and of the Governor of the State/for the constitution of a panel for the purpose of the appointment of a Governor for the State;".	[This is consequential on the decision of the Assembly that Governors of States are to be wholly nominated persons.] The Home Ministry express the hope that the latter part of this entry relating to Election Commission will be suitably amended so as to conform with articles 289 and 290 as passed by the Assembly. The Chairman of the Drafting Committee has already given notice of the necessary amendments.
-do-	"12. The emoluments and allowances and rights with respect to leave of absence of the Governor of the State, salaries and		The Home Ministry observe that it will probably be necessary to amend this entry in so far as it relates to the emoluments and allowances, etc., of Governors of the (contl.)

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allowances of the Ministers for the State, of the Speaker and Deputy Speaker of the Legislative Assembly, and if there is a Legislative Council, of the Chairman and Deputy Chairman thereof; the salaries, allowances and privileges of the members of the Legislature of the State."

Defence.

"14. Local Government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration."

Health.

"15. Public health and sanitation; hospitals and dispensaries; registration of births and deaths."

For entry 15, substitute:-

"15. Hospitals and dispensaries"; and insert the following new entry in the Concurrent List (List III) :-

"Public health and sanitation; registration of births and deaths; vital statistics".

States so as to empower the Parliament to fix them. They are still considering the question.

Mr. Sidhwa's amendments (Nos. 3598 and 3599) would confer on the Provinces powers of legislation in regard to local self-government in cantonment areas, the regulation of house accommodation in such areas and the delimitation of such areas. The Defence Ministry feel that these should not be accepted.

It is most essential that the Centre (Union) should have power to legislate for the whole of India when necessary on any matter concerning Public Health and compilation of vital statistics. The absence of power for the Centre to legislate on subjects relating to Public Health has impeded the progress of uniform health development. It is also obvious that to be of value the compilation of vital statistics should be regulated as far as possible on uniform lines throughout the country and for this the subject should be in the Concurrent List.

[Cabinet's recommendation: It would be sufficient if an entry "public health and vital statistics" is added to the Concurrent List. This would cover "registration of births and deaths."]

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(1)	(2)	(3)	(4)
Home Affairs.	15. Public health and sanitation; hospitals and dispensaries; registration of births and deaths.	For entry 15, the following be substituted :- "15. Hospitals and dispensaries."	[See remarks against same suggestion by Health Ministry]
Labour.	18. Education including Universities other than those specified in entry 40 of List I.	Add the following at the end of entry 18 :- "and subject to the provisions of List III as regards professional, technical and vocational training."	Consequential on the proposed amendment to entry 57 of List I.
Law	19. Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I; minor railways subject to the provisions of List I with respect to such railways; municipal tramways; ropeways; inland waterways and traffic thereon subject to the provisions of List I and List III with regard to such waterways; ports, subject to the provisions in List I with regard to major ports; vehicles other than mechanically propelled vehicles.	In entry 19, delete the words "minor railways subject to the provisions of List I with respect to such railways". [Consequent to the amendment proposed above, the definition in clauses (s), (t) and (u) of article 303 (1) would become unnecessary.]	[See remarks against entries 37 & 38 of Union List].

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(1)	(2)	(3)	(4)
Food	32. Trade and Commerce within the State; markets and fairs. 33. Regulation of trade, commerce and intercourse with other States for the purposes of the provisions of article 244 of this Constitution.	Transfer these entries to the Concurrent List (List III).	[Please see copy of Office Memorandum No. CG.603(44) from the Ministry of Food dated 28th June, 1949....Appendix]
Health	38. Adulteration of foodstuffs and other goods.	Transfer entry 38 to Concurrent List.	It is necessary that the Centre should have power to legislate regarding adulteration of foodstuffs and other goods on a uniform basis for the whole of India. At present the Food Adulteration Acts are all Provincial and the standards laid down are not always uniform. The Central Advisory Board of Health had pointed out some time ago the need for All-India legislation in the matter of foodstuffs. [Cabinet's recommendation: Agrees to the proposed transfer. It should however be examined whether it would not be advisable to alter the words "other goods" in the entry to "other articles of human consumption".]

(1)	(3)	(3)	(4)
Works, Mines and Power.	58. Taxes on the sale, turnover or purchase of goods including taxes in lieu thereof on the use or consumption within the State of goods liable to taxes within the State on sale, turnover or purchase; taxes on advertisements.	For entry 58, the following be substituted :- "Taxes on the sale, turnover, or purchase of goods including taxes in lieu thereof on the use or consumption within the State on sale, turnover or purchase, subject to any limitations imposed by Parliament by law relating to the development of inter-State rivers and river valleys for purpose of flood control, irrigation, navigation and hydro-electric power; taxes on advertisements."	The amendments proposed are necessary to prevent pernicious taxation by the Provinces on multi-purpose river valley or electrical development projects sponsored by the Central Government. For instance, the Damodar Valley Corporation may well be handicapped if Bihar and/or West Bengal impose unreasonable taxes on the sale of water for irrigation and the sale or consumption of electricity for industrial or other purposes. [The Drafting Committee considered these suggestions in October last, but did not accept them.]
	60. Taxes on the consumption or sale of electricity.	For entry 60, the following be substituted :- "Taxes on the consumption or sale of electricity, subject to any limitations imposed by Parliament by law."	
Industry and Supply.	62. Taxes on luxuries, including taxes on entertainments, betting and gambling.	The words "taxes on luxuries, including" be deleted.	The word "luxuries" is vague. [This suggestion was considered by the Drafting Committee, but was not accepted.]

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CONCURRENT LIST

Home Affairs. 2. Criminal Procedure, including all matters included in the Code of Criminal Procedure at the date of commencement of this Constitution.

After entry 2, the following new entry be added :-

Same as remarks against entry 3 of Union List

"2-A. Preventive detention for reasons connected with the maintenance of public order; persons subjected to such detention."

3. Removal of prisoners and accused persons from one State to another State.

For entry 3, the following be substituted :-

Same as remarks against entry 3 of Union List

"3. Removal from one State to another State of prisoners, accused persons and persons subjected to preventive detention for reasons connected with the maintenance of public order."

Labour

Add the following new entry after entry 17 :-

17-A. Vocational and technical training of labour."

By the Ministry of Industry and Supply Resolution of the 6th April, 1948, the Central Government has undertaken responsibility for the development, regulation and control of all major industries. As this question is intimately bound up with the availability of skilled technicians and craftsmen, training in technical and vocational trades has to be co-ordinated by the Central Government to bring the trainees up to uniform standards. It is obvious that

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this cannot be achieved if training is left entirely to the States, and it is therefore necessary that power should be taken by the Central Government to co-ordinate policy in respect of such training. It is accordingly proposed that a new entry "Vocational and technical training of labour" should be added to the Concurrent List.

Home Affairs.

After entry 18, the following new entry be inserted :-

"18-A. Public health and sanitation; registration of births and deaths; vital statistics."

[See remarks against same suggestion by Health Ministry.]

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(1)	(2)	(3)	(4)
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Information and Broadcasting.

"32. The sanctioning of cinematograph films for exhibition."

Transfer entry 32 to the Union List.

The item has been included in the Concurrent List in the present draft, presumably, in keeping with the existing position in regard to the administration of censorship. But, under the second exception to sub-section (1) of section 8 of the Government of India Act, 1935, inserted by a recent amendment, the Government of India propose to introduce legislation for the setting up of a Central Board of Film Censors in place of the existing Provincial Boards. When such a Central Board is set up, there will be no question of exercise of concurrent legislative authority by the Provincial Governments. There seems to be therefore hardly any point in retaining item 32 in the Concurrent List in the Draft Constitution.

Apart from the need for uniformity in censorship of films for the sake of which it is proposed to centralise censorship, it is important to develop films as a medium of education and publicity. It is the Union Government who will be primarily interested in this aspect of development and it is therefore considered essential that on the analogy of 'Broadcasting' which comes under item 28 of the Union List, "sanctioning of cinematograph films for exhibition" should also be within the exclusive legislative and executive jurisdiction of the Union Government.

(1)	(2)	(3)	(4)
Home Affairs.	"33. Persons subjected to preventive detention under the authority of the Union."	Delete.	[Same as remarks against entry 3 of Union List].
Health.	"34. Economic and social planning."	For entry 34, the following be substituted:- "34. Educational, Health, Economic and Social planning."	Social planning in its broad aspects must necessarily include educational and health planning and for clarification the entry may be amended as proposed. [Cabinet agrees to the proposed change].
-10-		The following new entry should be added:- "Development and regulation of mineral water-springs or spas."	There are a large number of mineral water-springs or spas with medicinal properties in different parts of India which are at present largely neglected. It will be in the national interest to develop and regulate them in a proper manner so that people desiring to take advantage of these spas may be encouraged to resort to them for treatment in large numbers. If the spas are well developed and form good Centres for treatment as at Karlsbad in Czecho-Slovakia or at Vichy, etc., in France, they may attract visitors from abroad; particularly from South-East Asia and thus add to our invisible imports and help the national economy. Proper regulation of the spas will also be necessary to enable an industry to develop for the bottling and sale of these valuable mineral waters. For a proper and co-ordinated development of these springs it is desirable that the subject should be in the Concurrent List.

Agriculture.

Add the following new entries
in the Concurrent List:-

- (i) "Measures aimed at increasing food production, regulation of prices and inter-State traffic in agricultural commodities including cattlefeeds and manures, agricultural machinery implements and cattle and crop planning."
- (ii) "Improvement of agricultural statistics."

The partition of the country has made the food situation in India and the consequential need for increasing food production one of greater importance than ever before. The determination not to import any foodgrains after 1951, except in case of a grave emergency, has made the Central Government responsible for the implementation of a food self-sufficiency plan in order to attain the goal of freedom from imports by 1951. While the Provincial Governments have to execute the plan, only central guidance and co-ordination can instil vigour and initiative in the food production drive. Agricultural policy as a whole, and the planning involved in executing this policy have assumed an All-India importance. The Central Government have to be responsible for the preparation, in consultation with the Provinces and States, and for the co-ordination of an All-India plan for increasing the food production. This involves fixing of targets of production and of allocation of these targets to Provinces and States and rendering assistance to the Provinces and States for achieving these targets by supply of machinery and fertilisers. It may also involve the Central Government in assuming direct responsibility for such measures like land reclamation etc. which, left to their slender revenues, individual Provinces and States may not be able to develop. In a situation when supplies of essential machinery and materials are short, the Central Government must also perform the function of procuring the maximum quantities of such machinery and material and ensuring that the limited supplies are used to maximum advantage. In other words, movement of

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foodstuffs and means of agricultural production between one Province and other, regulation of prices and such like matters, have to be hereafter brought into the sphere of Central Legislation. Therefore, in order that an All-India policy of food production may be effectively and systematically carried out, the Centre should have powers to legislate on "measures aimed at increasing food production, regulation of prices and inter-State traffic in agricultural commodities (including cattle feeds) and manures". In the absence of such powers, the component units in the country may follow a unilateral policy to the detriment of the All-India plan. Instances are not lacking where Provinces have sought to take such action.

The partition of the country and the consequent loss of jute and medium and long staple cotton areas has rendered the introduction of intelligent crop planning as between food-grains, sugarcane, jute and cotton, a matter of vital significance. This is a matter in which a Province or a State should hardly be allowed to act in isolation and the Centre would therefore, require powers to legislate on crop planning on an All-India basis.

In more advanced countries, collection and analysis of important statistics relating to food and agriculture are taken to be fundamental for greater food production. This does not hold good for less developed countries including India where 'Agricultural census' is poorly developed and is practically non-existent. In these circumstances, even the basic facts are lacking for the formulation of practical targets of agricultural

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production. Thus one of the fundamental needs today for the development of agriculture, forestry and fisheries as well as rural industries is improvement of the machinery for taking censuses, collecting and issuing current statistics and interpreting them. There is also considerable lack of uniformity in the Provinces and States in regard to the machinery for the collection of Agricultural statistics, particularly at the primary level. It is essential, therefore, for the Centre to assume powers to improve agricultural statistics and the machinery for their collection throughout India on uniform basis.

Note.- The notes typed in square brackets in the remarks column are by the Constituent Assembly Secretariat. The other notes are by the respective Ministries.

APPENDIX

COPY OF OFFICE MEMORANDUM NO. CG. 603(44)
FROM THE MINISTRY OF FOOD DATED THE
28TH JUNE, 1949.

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In the Draft Constitution of India the main provisions which relate to trade and commerce in, and production and supply of, foodstuffs are contained in Section 244 and 306. 'Trade and Commerce' should be considered in its two main aspects, viz., (1) trade and commerce within one of the component units of the Indian Union to be known as the "State", and (2) regulation of trade, commerce and intercourse with other States by one of the States. Section 244 governs the latter aspect of trade and commerce and Section 306 applies to the former aspect. In addition to these two statutory provisions contained in the Constitution one has also to look to the three Legislative Lists contained in the Seventh Schedule. List I which mentions items on which the Central Government alone will be empowered to legislate, does not contain either trade and commerce within the State or trade, commerce and intercourse with other States. These two items are distinctly shown in the State List and are also absent from the Concurrent List. Thus, when the new Constitution will come into force, regulation of trade and commerce both within and without a State will become the function of the various States in the Indian Union. But the Drafting Committee has apparently thought it fit to provide in Section 306 that the Central Government will have the power to make laws with respect to trade and commerce within a State in, and the production, supply and distribution of, foodstuffs (including edible oilseeds and oil) for a period of five years from the commencement of the new Constitution. During this period trade and Commerce within a State in, and the production, supply and distribution of, foodstuffs will be considered as if they were matters enumerated in the Concurrent List. Thus, after the expiry of the period of five years, these matters become the absolute concern of the individual States and States will be within their rights to legislate in respect of these matters in any way they like, subject to one safeguard which is contained in Section 243. It is that "no preference shall be given to one State over another nor shall any discrimination be made between one State and another by any law or regulation relating to trade or commerce, whether carried by land, water or air". This provision only ensures that any particular State will follow a uniform policy with regard to trade and commerce in any commodity, including foodstuffs, vis-a-vis all other States in the Indian Union, but the States' inherent jurisdiction to pass any acts which will restrict or promote trade and commerce in any particular commodity vis-a-vis the other States of the Union cannot be curtailed or challenged in any other way. It is possible that in future years the Governments in all the States as well as at the Centre will not belong to the same political complexion and it is quite probable that in some of the States the character of the Government will be different from the character of the government in the majority of the States as well as in the Centre. In such a contingency there is every likelihood that the legislation passed by such States will not be in consonance with the policies pursued by other States as well as by the Centre. Such legislation, though it might be considered to be in the public interest of that particular State, might not be compatible with the pattern of legislation in the other States as well as by the Centre.

Such a state of affairs is likely to lead to unnecessary friction and it is desirable that notwithstanding any powers which the States possess in regard to the regulation of trade and commerce the Centre should also possess powers in regard to the same items so as to be able to enforce uniformity in circumstances in which it finds that the various component units of the Indian Union are following policies which are at loggerhead with one another. Apparently it is on this consideration that the Drafting Committee has provided in Section 306 that for at least five years since the commencement of the new Constitution the Centre shall possess concurrent jurisdiction to legislate in regard to matters connected with trade and commerce in the States. The same considerations might be taken to their logical conclusion and a provision may be made for concurrent jurisdiction in such matters in both the States as well as the Central Government. It therefore seems necessary for this purpose to include items 32 and 33 relating to trade and commerce within the State and regulation of trade, commerce and intercourse with other States contained in the State List in the Draft Constitution, in the concurrent list and to delete them from the State List. As a result of this change in the lists in the Seventh Schedule, Section 244 may have to be amended suitably in order to give the necessary authority to the Centre instead of it being reserved only for the State as at present.

3. Even in regard to the temporary authority given to the Centre in Section 306, there are several commodities in respect of which the Centre does not possess the necessary authority to control production, supply and distribution. There is no adequate definition of foodstuffs. On the other hand, special provision is made for oilseeds and oils by adding the words "including edible oilseeds and oils" after "foodstuffs". It is not known whether foodstuffs will also include salt. In this Ministry, however, we shall assume that foodstuffs will include generally everything that can be used as, or is necessary for the purpose of preparation of, food. This Section makes no provision for fuel and cotton. In Provinces like Delhi which do not grow any foodstuffs in large quantities or produce cotton or fuel adequate for the needs of the population, Section 306 as it is drafted at present gives no authority to the Centre to pass necessary legislation for the regulation of trade in such commodities. Therefore, even the enabling Section, the period of whose validity is only five years from the commencement of the Constitution, is itself not sufficient for the purpose for which it seems to have been framed. It is, therefore, desirable to make addition in the concurrent list and delete the two items No. 32 and 33 from the State list so that the Centre's general power of superintendence for the welfare of the people may remain unimpaired.

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NOTICE OF CERTAIN AMENDMENTS TO THE SEVENTH SCHEDULE
GIVEN BY THE DRAFTING COMMITTEE AND BY MINISTERS OF
THE GOVERNMENT OF INDIA.

LIST I.

Entry 5

BY THE HON'BLE DR. SYAMA PRASAD MOOKERJEE:-

1. That entry 5 in List I be deleted. [Amendment No.3513 of Volume II of List of Amendments.]

Entry 22

BY THE DRAFTING COMMITTEE:-

2. That for the existing entry 22 in List I the following be substituted:-

"22. Piracies and crimes committed on the high seas or in the air and offences against the laws of nations committed on land or the high seas or in the air". [Amendment No.3520 of Volume II of List of Amendments.]

Entry 31

BY THE DRAFTING COMMITTEE:-

3. That for entry 31 in List I, the following be substituted:-

"31. Highways declared to be national highways by or under law made by Parliament". [Amendment No.3524 of Volume II of List of Amendments.]

Entry 56

BY THE DRAFTING COMMITTEE:-

4. That for entry 56 in List I the following be substituted:-

"56. Inquiries, surveys and statistics for the purpose of any of the matters in this List". [Amendment No.3543 of Volume II of List of Amendments.]

Entry 57

BY THE HON'BLE SHRI JAGJIVAN RAM:-

5. That in entry 57 in List I for the words "professional or technical training" the words "professional, vocational or technical training" be substituted.

New Entries 57A-57B

BY THE HON'BLE MAULANA ABUL KALAM AZAD:-

6. That the following new entries be inserted after entry 57 in List I:-

"57A. The collection and dissemination of educational information; inter-state co-ordination and federal assistance to the states in educational development.

57B. Promotion of higher technical education and research". [Amendment No.3545 of Volume II of List of Amendments.]

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Entry 61

BY THE DRAFTING COMMITTEE:-

7. That for entry 61 in List I, the following be substituted:-

"61. Establishment of standards of weight and measure; establishment of standards of quality for agricultural produce".
[Amendment No.3548 of Volume II of List of Amendments.]

Entry 63

BY THE DRAFTING COMMITTEE:-

8. That in entry 63 in list I, the words "so far as regards possession, storage and transport", occurring at the end be deleted. [Amendment No.3551 of Volume II of List of Amendments.]

Entry 64

BY THE HON'BLE DR. SYAMA PRASAD MOOKERJEE:-

9. That for entry 64 in List I, the following be substituted:-

"Development and regulation of any industry the development and regulation whereof under the control of the Union is declared by Parliament by law to be necessary or expedient in the public interest". [Amendment No.3552 of Volume II of List of Amendments.]

New Entry 64-A

BY THE HON'BLE DR. SYAMA PRASAD MOOKERJEE:-

10. That after entry 64 in List I, the following new entry be added:-

"64-A. Trade and commerce in, and the production, supply and distribution of -

(a) the product of industries the development and regulation whereof under the control of the Union is declared by Parliament by law to be necessary or expedient in the public interest; and

(b) any other goods, trade and commerce in, and the production, supply and distribution of which under the control of the Union is declared by Parliament by law to be necessary or expedient in the public interest." [Amendment No.3554 of Volume II of List of Amendments.]

Entry 68

BY THE HON'BLE DR. B.R. AMBEDKAR:-

11. That for amendment No.3558 of the List of Amendments, the following be substituted:-

'That in List I, for entry 68 the following be substituted:-

"68. Elections to Parliament and to Legislatures of States and of the President and Vice-President; and Election Commission to superintend, direct and control such elections."

Entry 70

BY THE DRAFTING COMMITTEE:-

12. That at the end of entry 70 in List I, the words "or Commissions appointed by Parliament", be added.
[Amendment No.3559 of Volume II of List of Amendments.]

Entry 74

BY THE HON'BLE SHRI N.V.GADGIL:-

13. That for entry 74 of List I, the following be substituted:-

"74. Multi-purpose river valley developments, including flood control, irrigation, navigation and hydro-electric power".

or, alternatively,

That in entry 74 of List I of the Seventh Schedule for the word "waterways" the words "river valleys" be substituted. [Amendment No.3562 of Volume II of List of Amendments.]

BY THE DRAFTING COMMITTEE:-

14. That in entry 74, before the words "inter-state waterways" the words "inter-state rivers and" be inserted, and the following words be added at the end:-

"and for other purposes, where such development under the control of the Union is declared by Parliament by law to be expedient in the public interest". [Amendment No.3563 of Volume II of List of Amendments.]

Entry 76

BY THE DRAFTING COMMITTEE:-

15. That for entry 76 in list I, the following entry be substituted:-

"76. Manufacture, supply and distribution of salt by Union agencies, regulation and control of manufacture supply and distribution of salt by other agencies".
[Amendment No.3565 of Volume II of List of Amendments.]

Entry 77

BY THE DRAFTING COMMITTEE:-

16. That entry 77 in List I, be omitted. [Amendment No.3567 of Volume II of List of Amendments.]
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LIST II.

Entry 9

BY THE DRAFTING COMMITTEE:-

17. That in entry 9 in List II, for the words "Compulsory acquisition of land" the following be substituted:-

"Acquisition or requisitioning of property."
[Amendment No.3591 of Volume II of List of Amendments.]

New Entry 10-A

BY THE DRAFTING COMMITTEE:-

18. That after entry 10 in List II, the following new entry be inserted:-

"10-A. Ancient and Historical Monuments other than those specified in entry 60 of List I". [Amendment No.3594 of Volume II of List of Amendments.]

Entry 11.

BY THE HON'BLE DR. B.R. AMBEDKAR:-

19. That for entry 11 in List II, the following entry be substituted:-

"11. Elections to the Legislature of the State subject to the provisions of any law made by Parliament."

Entry 18

BY THE HON'BLE SHRI JAGJIVAN RAM:-

20. That at the end of entry 18 in List II, the words "and subject to the provisions of List III as regards professional, technical and vocational training" be added.

Entry 32

BY THE HON'BLE DR. SYAMA PRASAD MOOKERJEE:-

21. That for entry 32 in List II, the following be substituted:-

"32. Trade and commerce within the State subject to the provisions of List I, markets and fairs". [Amendment No.3616 of Volume II of List of Amendments.]

Entry 33

BY THE HON'BLE DR. SYAMA PRASAD MOOKERJEE:-

22. That entry 33 in List II be deleted. [Amendment No.3617 of Volume II of List of Amendments.]

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Entry 36

BY THE HON'BLE DR. SYAMA PRASAD MOOKERJEE:-

23. That for entry 36 in List II, the following be substituted:-

"36. Production, supply and distribution of goods subject to the provisions of List I." [Amendment No.3619 of Volume II of List of Amendments.]

Entry 37

BY THE HON'BLE DR. SYAMA PRASAD MOOKERJEE:-

24. That for entry 37 in List II, the following be substituted:-

"37. Development and regulation of industries subject to the provisions of List I." [Amendment No.3620 of Volume II of List of Amendments.]

Entry 41

BY THE DRAFTING COMMITTEE:-

25. That for entry 41 in List II, the following be substituted:-

"41. Relief of the poor." [Amendment No.3622 of Volume II of List of Amendments.]

Entry 44

BY THE DRAFTING COMMITTEE:-

26. That for entry 44 in List II, the following be substituted:-

"44. Theatres, dramatic performances, cinemas, sports, entertainments and amusements, but not including the sanction of cinematograph films for exhibition." [Amendment No.3628 of Volume II of List of Amendments.]

Entry 64

BY THE DRAFTING COMMITTEE:-

27. That entry 64 in List II be omitted. [Amendment No.3641 of Volume II of List of Amendments.]

LIST III.

New Entry 17-A

BY THE HON'BLE SHRI JAGJIVAN RAM:-

28. That after entry 17 in List III, the following new entry be inserted:-

"17-A. Vocational and technical training of labour."

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Entry 26

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BY THE DRAFTING COMMITTEE:-

29. That for entry 26 in List III, the following be substituted:-

"26. Welfare of labour including conditions of work, provident funds, employers liability, workmen's compensation, invalidity and old age pensions and maternity benefits." [Amendment No.3658 of Volume II of List of Amendments.]

New Entry 26-A

BY THE DRAFTING COMMITTEE:-

30. That after entry 26, in List III, the following new entry be inserted.

"26A. Social insurance and social security." [Amendment No.3660 of Volume II of List of Amendments.]

Entry 27

BY THE DRAFTING COMMITTEE:-

31. That for entry 27 in List III, the following be substituted:-

"27. Employment and unemployment" [Amendment No.3661 of Volume II of List of Amendments.]

New Entry 28-A

BY THE DRAFTING COMMITTEE:-

32. That after entry 28 in List III, the following new entry be inserted.

"28-A. Commercial and industrial monopolies, combines and trusts." [Amendment No.3663 of Volume II of List of Amendments.]

New Entry 34-A

BY THE HON'BLE MAULANA ABUL KALAM AZAD:-

33. That after entry 34 in List III, the following new entry be inserted:-

"34-A. Educational Planning". [Amendment No.3669 of Volume II of List of Amendments.]

Entry 36

BY THE DRAFTING COMMITTEE:-

34. That for entry 36 in List III, the following be substituted:-

"36. Inquiries and statistics for the purposes of any of the matters specified in List II or III." [Amendment No.3671 of Volume II of List of Amendments.]

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FUNCTIONS OF THE MINISTRY OF EDUCATION AT THE CENTRE.

Present functions of the Ministry according to Law and Constitution. (1).	As proposed in the Draft Constitution. (2).	Changes suggested by the Ministry. (3).	Changes agreed to by the Cabinet. (4).
1. -	-	✓ A proviso to be added to sub-clause (ii) of clause 93 in order to earmark a fixed percentage of the total budget estimates of the Union Govt. for expenditure on education, etc.	Not accepted.
2. -	-	✓ A proviso to be added to sub-clause (ii) of clause 178 to earmark a fixed percentage of the budget estimates of the State Govts. for expenditure on education, etc.	Not accepted.
3. -	-	✓ A Proviso should be added to clause 233 that all public and private educational, scientific and cultural organisations in the Union shall be subject to general supervision by the Union Govt. in accordance with law.	Instead of the proposal made by this Ministry, there should be a provision for general supervision by the Central Govt of higher educational, scientific and technical institutions for the purpose of co-ordination and maintenance of standards.
4. External Affairs - Matters relating to education and culture.	Cultural relations with foreign countries (Item 10 in List I).	-	-
5. -	✓ U.N.E.S.C.O. (Item 12 in List I).	-	-

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Participation in international conferences in the field of Education and Culture (Item 13 in List I).

7. The Imperial Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial and any other similar other institution controlled or financed by the Government of India.

The National Library, the Indian Museum, the Imperial War Museum, the Victoria Museum and any other institution financed by the Govt. of India wholly or in part and declared by Parliament by law to be an Institution of educational importance. (Item 39 in List I).

The Indian War Memorial should be added to the existing list.

Agreed.

The words "by the Govt. of India" be substituted for the words "by Parliament by law".

Not agreed.

8. The Benares Hindu University and Aligarh Muslim University.

Banaras Hindu University and Aligarh Muslim University (Item 40 in List I).

Delhi University should be included in the existing list.

Agreed.

The words "and any other University declared by the Govt. of India to be an institution of national importance" to be added to this item.

The words "and any other University declared by the Govt. of India with the approval of Parliament to be an institution of national importance" be added.

9.

A new item "Institutions of scientific, technical or general education which on 15-8-49 were administered by the Govt. of India or recognised by the Govt. as All-India Institutions of national importance and any other institution declared as such by the Govt. of India" be inserted as Item 40-A. in List I.

Agreed.

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11. Copyright.

12. Federal Agencies and institutes for the following purposes, that is to say, for research, for professional or technical training, or for the promotion of special studies.

13. Inquiries and statistics pertaining to educational matters.

- 7 14. Ancient and historical monuments; Archaeological sites and remains.

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✓ Copyright.

- ✓ Union Agencies and Institutes devoted to research, professional or technical training or for the promotion of special studies. (Item 57 in List I).

- ✓ Inquiries, surveys and statistics for the purposes of the Union + pertaining to education (Item 56 in List I).

- ✓ Ancient and historical monuments declared by Parliament by law to be of national importance; Archaeological sites and remains. (Item No. 60 in List I).

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✓ In item 41 of List I, the "Department of Anthropology" should be added to the existing list.

✓ A new item 57-A should be inserted to give the Union Govt. the right of supervision of public and private educational, scientific and cultural organisations situated within the territories of the Union.

✓ A new item "Co-ordination of educational & cultural activities" should be inserted as item 57-B in List I.

✓ A new item "the collection and dissemination of educational information" to be added as 56-A.

✓ In item 60, (i) the words "The Deptt. of Archaeology as it existed on 15-8-49, and" be inserted at the beginning, and (ii) the words "Declared by Parliament by law to be of national importance" be substituted by the words "declared by the Govt. of India to be of national importance".

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Agreed.

Same remarks as against Sl. No. 3

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Not necessary.

Agreed.

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15.	-	-	A new item "protection and preservation of such recors, books or other documents of historical or cultural value as are declared by the Govt. of India to be of national importance" should be inserted as item 60-A in List I.)	Agreed. <i>mi</i>
16.	-	-	Item item 34 of List III, the word "Educational" should be added before the words 'Economic and social planning'	Agreed.
17.	-	-	"Promotion of higher education and research in scientific, technical and general general subjects" should be added as a new item No. 38 in List III.	Agreed with slight alteration in the wording.

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EXTRACTS FROM HON'BLE MINISTER FOR EDUCATION'S
NOTE SENT TO THE CABINET, ON 6TH MAY 1949.

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6. In view of what has been stated above, it is necessary that the New Constitution of India must contain provisions which would allow the Centre to play an effective part in the educational development of the country. The following amendments would be necessary for the purpose:-

- (1) A proviso should be added to sub-clause (ii) of Clause 93 in order to earmark a fixed percentage of the total budget estimates of the Union Government for expenditure on education, science and culture. In an amendment of which I gave notice in my personal capacity, I suggested that this figure should be 15% of the total Central Budget.
 - (2) A similar proviso should be added to sub-clause (ii) of Clause 178 to earmark a percentage of the budget estimates of the State Governments for purposes of expenditure on education, science and culture. I had suggested that in this case the figure should be 25% of the total budget estimates.
 - (3) A proviso should be added to Clause 233 that all public and private educational, scientific and cultural organisations in the Union shall be subject to general supervision by the Union Government in accordance with law.
 - (4) In List I, Union List, the following additions or amendments should be made:
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- (a) In Item 39, (i) the "Indian War Memorial Museum" which is the concern of the Ministry of Education, should be added to the existing list; and (ii) the words "by Government of India" to be substituted for the words, "by Parliament by law". This amendment is necessary as legislations would require a long period and quick action may at times be necessary. Besides, in a democratic State, the Government would depend on the on the suffrage of the Parliament, and on the other hand, Parliament would normally pass any legislation initiated by the Government of the day.
- (b) In Item 40, the name of the Delhi University has been left out, perhaps through inadvertence. This should be included and in order to enable the Union Government to bring under its direct supervision any other University which may be demanded in public interest, there should be a phrase to the effect "and any other University declared by the Government of India to be an institution of national importance." It may be pointed out that the Visva Bharati University, founded by Rabindranath Tagore has already approached the Central Government with a request that it should be accepted as a Central University and necessary legislation enacted for the purpose.
- (c) A new item "Institutions of scientific, technical or general education which on the 15th of August, 1949, were administered by the Government of India as All-India Institutions

of national importance and any other institution declared as such by the Government of India" be inserted as Item 40-A;

- (d) In Item 41, the "Department of Anthropology" should be added to the existing list, as in December, 1941, Anthropology was separated from the Zoological Survey of India and a new Department known as the Anthropological Department created.
 - (e) A new item "the collection and dissemination of educational information" should be added as a new item 56A in order to define the functions and powers of the Union Government in these respects.
 - (f) A new item 57A should be inserted to give the Union Government the right of supervision of public and private educational scientific and cultural organisations situated within the territories of the Union. Insertion of this item would be necessary to give effect to the amendment proposed above to Clause 233.
 - (g) A new item "Coordination of educational and cultural activities" should be inserted as 57B in order to enable the Union Government to exercise necessary functions for the purpose. It may be added that this function is now exercised by the Federal or Central Government in all important States including such Federal States as allow residuary powers to the Federating Units. Item 57 of List I would not be adequate for the purpose.
 - (h) In item 60, (1) the words "The Department of Archaeology as it existed on the 15th of
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August 1949, and "be inserted at the beginning, and (ii) the words "declared by Parliament by law to be of national importance" be substituted by the words "declared by Government of India to be of national importance". At present Archaeology is exclusively the responsibility of the Central Government. The introduction of the phrase referred to above would restrict Central jurisdiction only to certain ancient historical monuments and leave others outside its purview. Besides, as declaration by Parliament by law involves a long process, the retention of this phrase may create a situation where a monument may be irremediably injured before necessary legislation to declare the monuments concerned as of national importance can be passed.

- (1) A new item "Protection and preservation of such records, books or other documents of historical or cultural value as ^{are} ~~the~~ declared by Government of India to be of national importance", should be inserted as item 60A in the List in order to give the Union Government necessary powers in the matter.

7. In List III, the Concurrent List, the following new items should be added:-

- (a) In item 34, the word and comma "Educational" should be added before the words "economic" and social planning."
- (b) "Promotion of higher education and research in scientific, technical and general subjects" should be included as new item 38. 43

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Approval of the Cabinet is sought to the amendments suggested in paragraphs 6 and 7 above. After the Cabinet have considered the suggestions, the Chairman of the Drafting Committee may be requested to draft amendments and place them before the Constituent Assembly with a view to giving effect to these recommendations.

Sgd. A.K. Azad.

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The present entry No.40 in List I - Union

11054/4803
List of the Seventh Schedule to the Draft Constitution of India reads as follows :-

"The institutions known on the 15th day of August, 1947, as the Benares Hindu University and the Aligarh Muslim University."

In order to allow of other educational institutions being brought within the scope of the Union List, it is felt desirable that the following words should be added to the existing entry 40 at the end :-

A " and such other institutions as may be declared as Union Universities or are granted charters of incorporation as Universities."

H.M. with whom I have discussed the matter agrees.

The matter may now be examined in consultation with the Ministry of Law and other Ministries and H.M. will then move a short notice amendment to bring this into force.

Read
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J.E.A.
D.E.A.(D)

W.K. Lal 5/2
K.R. Sethi
5/2

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The draft Constitution of India has been obtained from the Library and is put up. In the first part of the amendment proposed above, the authority to declare an institution as a Central University is presumably to be the Central Legislature. It is not clear what is meant by a charter of incorporation. Perhaps it is intended to be ^{Universities established by an} an Act of the Central Legislature. Ministry of Law may see for favour of remarks, if any, in the first instance.

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2. As regards other Ministries to be consulted, it

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seems that only Ministry of Finance need be consulted, in view of possible financial implications in establishing more Central Universities. We are not in a position to give even ^{an} approximate idea of the financial implications.

Later on the question of consulting the Provincial Govt. or ~~other~~ ^{the} Govt. of the area in which a particular institution is situated ^d may arise, if that institution is to be declared a Central one.

3. Ministry of Law may also kindly advise ~~us~~ as to the procedure to be adopted for the "short notice amendment" referred to in the above note. Presumably ~~a~~ it will be a Govt. amendment to the Draft Constitution to be moved by the Hon'ble Education Minister when the Seventh Schedule is taken ^{up} by the Constituent Assembly when it meets again as a Constitution making body. Approval of the Cabinet in principle will, it appears, be necessary.

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Ministry of Law for favour of

Opinion on points raised above

L. R. Sethi
12/2

Ministry of Law

to Govt. of Edu. no. NO. D. 1054/49 D3. D. 15-2-49

MINISTRY OF LAW

15 FEB 1949

File No.
Diary No. 682/49

46

As regards Charters of Incorporation, the position is as stated in the note of this Ministry dated 24-5-48. Relevant extract from that note is given below:-

"Under the existing law, a Charter of Incorporation can only be granted by the Crown: for the constitution of corporations is one of the prerogatives vested in the Crown by the Common law. The Charter cannot be granted by Parliament, but of course Parliament can pass a special Act incorporating a Company or other Body. Royal Charters have been granted to institutes in India, e.g., Institute of Engineers India. The Dominion Legislature has no power to issue a Charter of Incorporation of the proposed Body of Registered Accountants, but it can pass a special Act for the incorporation of that Body."

There is no question of establishment of Universities by an Act of the Central Legislature so long as the ^{existing} entries stand in the Draft Constitution. It will be seen that under entry 18 of List II, Universities other than the Benares Hindu University and the Aligarh Muslim University are a Provincial subject of legislation. I consulted the Additional Draftsman as to the form of the amendment at A on page 1. He suggests that it may be considered whether an amendment of entry 40 in List I on the lines of entry 39 of that List will not serve the purpose. He provisionally suggests that the following addition may be made in entry 40 of List I:-

"and such other Universities or educational institutions as are financed by the Govt. of India, either wholly or in part, and are declared by Parliament by law to be of national importance."

The above amendment will, of course, require consequential amendment in entry No. 18 of List II.

2. The prescribed time for sending notices of amendments to the Draft Constitution has expired but a shorter notice

of

48

4- (60) 48

of the amendment may be given to the Constituent Assembly by the Hon'ble the Education Minister some time before the Constituent Assembly commences its sitting in May. If the President admits the short notice amendment, it may be moved by the Hon'ble Minister, who is a Member of the Constituent Assembly, at the proper time. After the amendment has been finally drafted/it will be desirable to ascertain informally from the Constituent Assembly Secretariat the exact procedure in this matter before notice of the amendment is actually sent.

17-2-49
(N.C. Ray)

Ministry of Education. D3.

L.M. No. 682/49 of 18.2.49.

17-2-49
(N.C. Ray)
18 FEB 1949
Diary No. 18 FEB 1949

Legislative Department

Submitted for order.

Min. of Fin. may first see.

Ces
18/2
A(E)

18/2/49

L. R. Sethi
19/2

Ministry of Finance

Min. of Education D1034/49 D3 Date 19.2.49

Ministry of Finance

11/03/49
9 FEB 1949
27/10/49

I have discussed this with J E A Prof Humayun Kabir. He has agreed to examine the proposal further and show us the final draft. The disadvantages of amending item 40 of the I list and the comparative advantages of making suitable provision in list III have been explained in a separate working note.

40

Pls. haturamane

49
What is the object of ⁽⁴⁷⁾ the proposed amendment?
Article 262 enables the Union to make grants
for any public purpose. In order to
finance an institution fully or partially
from Union funds
it is not necessary to amend the entry.

Is it desired to acquire whenever necessary
in the case of a University or other Educational
institution of national importance exclusive
legislative powers and leave the Province
no powers. Why is this ^{found} necessary? Will
it not serve the purpose if a suitable
entry is made in List III (concurrent) to
give the Union Legislature the necessary
power in respect of any such Universities
or educational institutions which may by
law be declared by Parliament to be
of national importance?

Is it necessary to mention the condition
of 'financed by the Government of India wholly
or in part'? This seems unnecessary
and ~~irrelevant~~ both in item 39 and ^{the proposed} item 40.
amendment to item 40. The provision in
item 60 in respect of Ancient and Historical
Monuments seems to be sufficient.

The following objections to the proposed
Amendment may be considered

48
~~Like~~ Unlike the Universities of Benares & Aligarh
the additional Universities and institutions
will not have a fixed or continuing
status under the Constitution. The Parliament
by law can bring them under exclusive

Union Control, or by repeal of the law
throw him back to the control of a State.
~~This~~ This situation is likely to result in
the ~~undesirable consequences of bringing~~
the management of universities and important
educational institutions ^{of national importance} into the vortex
of party politics. In respect of these
important institutions it is very undesirable
both from the point of view of finance and
the educational welfare of the country to
leave them to the mercy of party politics.

Conflicts between the
~~States~~ States and the Union may become
more frequent and progress likely
to be hampered.

The same criticism would apply
to the provisions in this regard in respect
of museums, libraries and ancient monuments,
although the ~~risk is not~~ these subjects
are not likely to ^{arouse} the strong personal
interests or party feelings.

By making suitable entries in Part List in
Concurrent List ~~the~~ the above ~~the~~ dangers
can be avoided to a large extent. The Union
can exercise its legislative powers in respect
of these institutions ^{to the extent deemed necessary from time to time} in the manner prescribed
in Article 231. The State concerned will
continue to have all ^{the} ~~the~~ legislative powers and
the institutions continuity of its jurisdiction will be
maintained.

(W) 50/

This arrangement
is not
likely to hamper
Progress
or bring
party
politics
into play
to the
same
extent
as under
the present
Amendment

149

Wages

Hand
29 Jan 49

L.R. Leach
2873

L. R. Allen
29/3

 W_{HD}

Recd
28/3

29/3

51

Draft Constituent ~~Am~~ of India - Amendment.

D. 1127/49-A2

Will A.3 Section kindly put up their file No. F.13-1/48-A3 today for reference and early return.

12/12
3/49
D. 1259/49-A3
at-
Recd. 1-45 pm
Mr. Gupta
12/3

Our file regarding amendments to the Draft Constitution of India is not traceable. It was ~~xxx~~ last submitted to DEA(D) on the 10th December 1948. A search is being made in the rooms of Secy. and J.E.A. and from P.S. to H.M. U.S.(A) may also see

208
30329
U.S.(A)

A.2

The above file is now not reqd. by A2/A3 Secy. should kindly trace their file as directed by U.S.(A)

31/3
Mr. Gupta
31/3

Secy. Thanks. D.S.(D) was also asked for information which is available in that file. P.A. to J.E.A. should be asked about it. I am in the room. I will try to find it. A.2
31.3.49

Our file regarding amendments to the Draft Constitution of India, which was submitted to D.S.(D) on the 10th December 1948, is still not traceable. P.A.s to J.E.A. were informally asked to make a search in J.E.A.'s room. The file is not available there. P.S. to Secretary was also consulted and the file is not with Secy. too. D.S.(D) also asked that file, on another file, which is placed below.

27/4

27/4

27/4

U.S.(A)

P.A. to D.S.(D)
P.A. to J.E.A.

P.A. to D.S.(D) & J.E.A. should see kindly report about the whereabouts of the file in question & return it if it is with either of them.

I have made a search in his room these papers are not with D.S.(D)

Recd. 2.3.4.49

25/4/49

P.T.O.

57

3

15A-1175412
1970

 $30/4.$

U.S. (A).

Recd
3-14

$$\frac{A_1}{A_2} = \frac{2}{5}$$

$\frac{12}{5149}$
13

ms. B. 1. 12
3/5

~~our file regarding the~~ ~~Department~~

14-00000

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1044 d A
2828



51/

(From prepage).

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Our file regarding amendments to the Draft Constitution of India has not so far been received from J.S. P.A. to J.S. may see with ref. to his note dated 30-4-49 at prepage, and kindly let us have the file, if it is no longer required by Joint Secy. The file in question is ^{urgently} required by A.2 Section.

6/5/49

ASV
6/5

The file was returned by JS yesterday.

WAD
7/5

P.A.L. J.S.

D. 11/1
Mr. Gupta
7/5

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133
MINISTRY OF EDUCATION

DY: NO: 5136-G/48

A copy of the "raft Constitution is placed below at slip 'S'. The items in the three Lists in the Seventh Schedule, which concern this Ministry, have been marked in red pencil. JEA and Heads of Divisions may kindly see for remarks, if any, which could be communicated to the Constituent Assembly of India.

It'd.- 18/6/48

Sd/- Som Datt
18/6

Archaeological Section who have to make some comments have been asked to prepare a short note.

Sd/- R. Lal
18.6.48

General Section should have shown the draft constitution to me or to Edn I. I shall be glad if AS(G) will kindly get a copy for use by me and Edn I.

Edn I may please examine the lists.

Sd/- H.S.Verma
21.6.48

As verbally directed to AS(G), a requisition is put up for signature. On receipt of the copies of the Draft Constitution, a copy will be given to Edn.I Section for necessary action.

Meanwhile Genl Sec. Copy or any other copy which may be available may be given to AS(E).
Som Datt
28/6

A copy of the Draft Constitution is placed below.

Edn.I Section may see and please ~~take action~~ examine the lists as desired by AS(E) in his note dated 21-6-48 above.

I have retained the copy of the Constitution
Edn I file req. As has been
forwarded to Dy Sec. H.S. Verma
12/7/48

Comments put up by AS(E)

u/s
14/7
Edn I
14/7
14/7
14/7

D.576. G/48-

No copy is available

D-6160/48-E.I

To

The Secretary,
Constituent Assembly of India,
Council House,
New Delhi.

Subject:- Draft Constitution of India.

Sir,

F.R.

With reference to your letter No. CA/21/Cons/ 48-III., dated the 14th June 1948, on the subject not above, I am directed to offer the following comments on the provisions contained in the Draft Constitution in so far as the Ministry of Education is concerned:-

(a) That the following proviso be added to sub-clause (2) of Clause 93 of the Draft Constitution.

" Provided that the expenses for Education, Science and Culture shall not be less than 15% of the total budget estimates"

(b) That the following proviso be added to sub-clause (2) of Clause 178 of the Constitution.-

" Provided that expenses for Education, Science and Culture shall not be less than 25% of the total budget estimates".

(c) That the following proviso be added to Clause 233 of the Draft Constitution .-

" Provided that all public and private Educational, Scientific and Cultural Organisations in the Union shall be subject to general supervision by the Union Government in accordance with Law."

2. I am^{also} directed to suggest ~~that~~ the following additions and alterations to the three Legislative Lists in the Seventh Schedule of the Draft Constitution.-

LIST I - UNION LIST.

(a) Item No. 39. In addition to the Indian Museum and Victoria Memorial, the Ministry of Education is also concerned with the 'Indian War Memorial Museum' and it may be included in this item.

Item No. 40⁴¹ With effect from 1st December Anthropology was separated from the Zoological Survey of India and a new Department known as

55
From prepage

as 'The Anthropological Department' was created.

Item 41 may therefore be amended to read as under:-

" The Survey of India, the Geological, Botanical, Zoological and Anthropological Surveys of India; Union Meteorological Organisations".

Q. 11-371
V/P-193

Item 60. At present Archaeology is the exclusive responsibility of the Central Government and it is shown in the present constitution as "Ancient and historical monuments, archaeological sites and remains" (Item 15 in list No. 1 - Federal Legislative List of the Seventh Schedule of the Govt. of India Act 1935). In the Draft Constitution, however, item 60 in List I - Union List of the Seventh Schedule has been reworded as "Ancient and historical monuments declared by Parliament by law to be of national importance, archaeological sites and remains". The introduction of the under lined words will lead to confusion as it will ^{on the hand} restrict the ^{only from} jurisdiction to ancient and historical monuments ^{which} are declared by Parliament to be of national importance ^{and, on the other hand, will} but at the same time place all archaeological sites and remains within that jurisdiction ^{of the Central Govt. unqualifiedly,} as suggested by the Drafting Committee. ~~The Ministry of Law who have been consulted agree. Moreover, there is a further difficulty that it is a long process to~~ secure a declaration by Parliament by Law and it is, therefore, possible that a monument may be irremediably spoilt before necessary legislation to declare the monument concerned as of national importance ^{is passed} gets through. This Ministry, therefore, suggest, that the words under lined above which find place in item 60 in List I - Union List of the Seventh Schedule of the Draft Constitution of India be deleted.

V/P-193.

57

(From prepage)

-2-

as ' The Anthropological Department ' was ~~re-~~
~~established~~ created. Item ⁴¹40 may therefore be amend-
ed to read as under -

• The Survey of India, the Geological, Botani-
cal, Zoological and Anthropological Surveys
of India; Union Meteorological organisations"

(b) The following may ~~also~~ be inserted as item 57-A
in List I - Union List.-

"Supervision of all public and private Educational,
Scientific and Cultural Organisations situated
within the territories of the Union or in receipt
of financial aid from the revenues of the Union
or of any of the Constituent States".

(c) "Co-ordination of Educational and Cultural Acti-
vities" should be added as a separate item in
List No. I - Union List. This function is now
exercised by the Federal or Central Government
in all important States, including such ~~federating~~
~~units~~ Federal States as allow residuary powers to
the federating units. A strong co-ordinating
agency in the field of Education, Science and
Culture will be required to promote national
unity and to ensure intellectual and moral progress
For this purpose item 57 of List I will not be
adequate.

(d) " Archives, including private Archives and histo-
rical manuscripts, and the regulation of their
preservation and Use" may be added as a separate
item in List No. I - Union List.

(e) The question to amend Item 80 of the Union List
is also under the active consideration of this
Ministry and any change required to be made there
will be intimated to the Constituent Assembly in
due course.

(next page.....

8

(From prepage)

-3-

(57)

LIST III - CONCURRENT LIST.

" Promotion of Higher Technical Education and Research
may be included in the Concurrent List if not ⁱⁿ on the
Union List.

Yours faithfully,

[Signature]
Deputy Secretary.

*Let us be sure that we
are not in the Union
list - the Concurrent
list? Or can we suggest
amendments to the
Constitution in the
manner. This is essential
B.H.T. P. records for
*[Signature]**

12

(58)

**Amendment in the Draft Constitution of India regarding
National Archives :**

After entry 60 of Appendix VII , List I

' Protection and preservation of such record,
books or other documents of historical or
cultural value as are declared by or ~~made~~
under Law made by Parliament to be of national
importance'.

Draft Letter
Memorandum
Telegram

1. Date of despatch

No.

Dated

2. List of enclosures

My dear

You know that at present we have three Central Universities, namely, Aligarh, Banaras and Delhi. I find, however, that in the Draft Constitution Delhi University has been dropped from the list. Banaras and Aligarh occur in Item 40 of List I - Union List to the VII Schedule (Article 217), but not Delhi. Will you kindly let me know why the name of Delhi has been left out?

Recently the Viswa Bharati, Santiniketan applied to this Ministry for recognition as a Central University. We make some grants to Viswa Bharati, but as you know, grants to all Central Universities are covered by agreements and do not necessarily follow from the Acts incorporating them. The Ministry of Education sympathise with the request of Viswa Bharati. The question of amending the Government of India Act, 1935 for the purpose is now under consideration. I will be grateful if you will please let me know the procedure for securing the inclusion of Viswa Bharati also among the Central Universities under the New Constitution.

Yours sincerely,

The Hon'ble Dr. B.R. Ambedkar, Bar-at-Law,
Minister for Law.
NEW DELHI.

राष्ट्रीय अभिलेखागार, भारत
जनपथ, नई दिल्ली

NATIONAL ARCHIVES OF INDIA
JANPATH, NEW DELHI

प्रलेख का शीर्षक:

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